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PTO/SB/21 (09-04)
Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/756,970
	Filing Date	January 13, 2004
	First Named Inventor	Kevin T. Foley
	Art Unit	3733
	Examiner Name	Mary C. Hoffman
Total Number of Pages in This Submission	Attorney Docket Number	MSDI-223/PC444.06

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input checked="" type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	Return Receipt Postcard; Copies of Cited Foreign References and Publication References
<input checked="" type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Reply to Missing Parts/Incomplete Application	Remarks	
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Krieg DeVault LLP		
Signature			
Printed name	Brad A. Schepers		
Date	August 20, 2007	Reg. No.	45,431

CERTIFICATE OF TRANSMISSION/MAILING		
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:		
Signature		
Typed or printed name	Brad A. Schepers	Date August 20, 2007

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:)	Before the Examiner
Kevin T. Foley et al.)	Mary C. Hoffman
)	
Application Serial No. 10/756,970)	Group Art Unit 3733
)	
Filed January 13, 2004)	Ref. No. MSDI-223/
)	PC444.06
)	
SURGICAL INSTRUMENTATION AND)	August 20, 2007
METHOD FOR TREATMENT OF THE SPINE)	

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the duty of disclosure embodied in 37 C.F.R. §1.56, Applicant wishes to bring to the attention of the Examiner the following patents, publications and/or other information listed on the attached PTO Form SB/08A and/or SB/08B.

This information has not heretofore been cited by the Applicant or the Examiner. Required copies of the cited references are provided herewith. The filing of this Supplemental Information Disclosure Statement shall not construed as an admission that the information cited is, or is considered to be, material to patentability, as defined in §1.56, or prior art.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on:

August 20, 2007

Date of Deposit

Brad A. Schepers

Name of Registered Representative

Signature

August 20, 2007

Date of Signature

08/24/2007 SSITHIB1 00000035 10756970

01 FC:1806

180.00 OP

Supplemental Information Disclosure Statement
Application Serial No. 10/756,970
Inventors: Kevin T. Foley et al.
Page 1 of 2

Following are brief statements of relevance for each of the non-English references cited in the Supplemental Information Disclosure Statement. German Patent No. DE 3736604 A1 appears to disclose an instrument 20 having one or more expandable portions 18, 19. (See Figures 1 and 2). French Patent No. FR 15864 appears to disclose an instrument having a balloon-type expandable distal end portion that is expandable via air pressure. (See Figures 1-3).

This Supplemental Information Disclosure Statement is being submitted after the mailing of a first Office Action on the merits, but before the issuance of a final Office Action or a Notice of Allowance. Accordingly, the requisite fee of \$180.00 pursuant to 37 C.F.R. §1.17(p) to have the Supplemental Information Disclosure Statement considered is submitted herewith. Should any additional fee be required, please charge such fee to Deposit Account No. 12-2424, but not to include payment of any issue fees.

Respectfully submitted,

By: 

Brad A. Schepers

Reg. No. 45,431

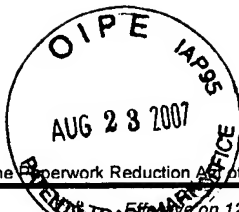
Krieg DeVault LLP

One Indiana Square, Suite 2800

Indianapolis, Indiana 46204-2079

(317) 238-6334 (voice)

(317) 636-1507 (facsimile)



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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL
For FY 2005☐ Applicant claims small entity status. See 37 CFR 1.27TOTAL AMOUNT OF PAYMENT (\$)
180.00**Complete if Known**

Application Number	10/756,970
Filing Date	January 13, 2004
First Named Inventor	Kevin T. Foley et al.
Examiner Name	Mary C. Hoffman
Art Unit	3733
Attorney Docket No.	MSDI-223/PC444.06

METHOD OF PAYMENT (check all that apply)☐ Check ☒ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____☒ Deposit Account Deposit Account Number: 12-2424 Deposit Account Name: Krieg DeVault Lundy

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

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FEE CALCULATION**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	0.00
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180
Total Claims	Extra Claims	Fee (\$)
- 20 or HP = _____ x _____ = <u>0.00</u>		
HP = highest number of total claims paid for, if greater than 20.		
Indep. Claims	Extra Claims	Fee (\$)
- 3 or HP = _____ x _____ = <u>0.00</u>		
HP = highest number of independent claims paid for, if greater than 3.		

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 = _____ / 50 = _____ (round up to a whole number) x _____ = _____				

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Supplemental Information Disclosure Statement

Fees Paid (\$)

180.00

SUBMITTED BY

Signature

Registration No.
(Attorney/Agent) 45,431

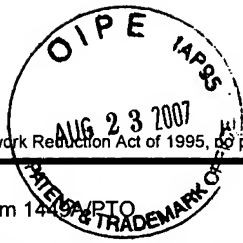
Telephone 317-636-4341

Name (Print/Type) Brad A. Schepers

Date August 20, 2007

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Substitute for form 1449, USPTO

**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**

(use as many sheets as necessary)

Sheet 1 of 4

Complete if Known

Application Number	10756,970
Filing Date	January 13, 2004
First Named Inventor	Kevin T. Foley
Group Art Unit	3733
Examiner Name	Mary C. Hoffman
Attorney Docket Number	MSDI-223/PC.444 06

U.S. PATENT DOCUMENTS

Examiner Initials*	Cite No. ¹	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Application of Cited Document	Pages, Columns, Lines where Relevant Passages or Relevant Figures Appear
		Number-Kind Code ² (if known)			
		3,800,788	04-02-1974	White	
		3,850,176	11-26-1974	Gottschalk	
		3,875,595	04-08-1975	Froning	
		4,323,071	04-06-1982	Simpson et al.	
		4,453,539	06-12-1984	Raftopoulos et al.	
		4,625,722	12-02-1986	Murray	
		4,644,951	02-24-1987	Bays	
		4,706,670	11-17-1987	Anderson et al.	
		4,714,478	12-22-1987	Fischer	
		4,909,252	03-20-1990	Goldberger	
		5,015,255	05-14-1992	Kuslich	
		5,049,132	09-17-1991	Shaffer et al.	
		5,100,423	03-31-1992	Fearnot	
		5,102,413	04-07-1992	Poddar	
		5,176,683	01-05-1993	Kimsey et al.	
		5,176,692	01-05-1993	Wilk et al.	
		5,269,785	12-14-1993	Bonutti	
		5,290,306	03-01-1994	Trotta et al.	

Examiner Initials*	Cite No. ¹	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Application of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T ⁴
		Country Code ³ -Number ⁴ -Kind Code ⁵ (if known)				
		DE 3736604 A1	05-11-1989	Milewski		
		DE 390244 C2	05-29-2001	Richter-Turtur		
		GB 512456	09-15-1939	Sadilkova		
		FR 15864	05-03-1912	Charnaux		
		WO 95/20362	08-03-1995	Reiley et al.		
		WO 96/39970	12-19-1996	Reiley et al.		

Examiner
SignatureDate
Considered

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

¹ Applicant's unique citation designation number (optional). ² See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

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Substitute for form 1449A/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT <i>(use as many sheets as necessary)</i>				<i>Complete if Known</i>	
				Application Number	10/756,970
				Filing Date	January 13, 2004
				First Named Inventor	Kevin T. Foley
				Group Art Unit	3733
				Examiner Name	Mary C. Hoffman
Sheet	2	of	4	Attorney Docket Number	MSDI-223/PC.444 06

U.S. PATENT DOCUMENTS					
Examiner Initials*	Cite No. ¹	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Application of Cited Document	Pages, Columns, Lines where Relevant Passages or Relevant Figures Appear
		Number-Kind Code ² (if known)			
		5,303,718	04-19-1994	Krajicek	
		5,330,429	07-19-1994	Noguchi et al.	
		5,331,975	07-26-1994	Bonutti	
		5,496,330	03-05-1996	Bates et al.	
		5,499,981	03-19-1996	Kordis	
		5,514,153	05-07-1996	Bonutti	
		5,522,790	06-04-1996	Moll et al.	
		5,522,846	06-04-1996	Bonutti	
		5,531,856	07-02-1996	Moll et al.	
		5,540,693	07-30-1996	Fisher	
		5,540,711	07-30-1996	Kieturakis et al.	
		5,549,679	08-27-1996	Kuslich	
		5,772,681	06-30-1998	Leoni	
		5,814,044	09-29-1989	Hooven	
		5,879,353	03-09-1999	Terry	
		5,957,884	09-28-1999	Hooven	
		5,984,937	11-16-1999	Morse et al.	
		6,048,346	04-11-2000	Reiley et al.	
		6,613,054	09-02-2003	Scribner et al.	
		6,899,719	05-31-2005	Reiley et al.	

Examiner Initials*	Cite No. ¹	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Application of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T ⁴
		Country Code ³ -Number ⁴ -Kind Code ⁵ (if known)				

Examiner Signature		Date Considered	
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Substitute for form 1449A/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(use as many sheets as necessary)

Complete if Known

Application Number	10/756,970
Filing Date	January 13, 2004
First Named Inventor	Kevin T. Foley
Group Art Unit	3733
Examiner Name	Mary C. Hoffman
Attorney Docket Number	MSDI-223/PC444.06

Sheet	3	of	4
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U.S. PATENT DOCUMENTS

[illegible][illegible]

Examiner Signature		Date Considered	
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				Examiner Name	Mary C. Hoffman
Sheet	4	of	4	Attorney Docket Number	MSDI-223/PC444.06

NON PATENT LITERATURE DOCUMENTS			
Examiner Initials*	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ²
		WILLIAM R. KENNEDY, M.D., Fractures of the Tibial Condyles A Preliminary Report on Supplementary Fixation With Methylmethacrylate, Clinical Orthopaedics and Related Research, July-August 1978, pgs. 153-157, Number 134, J.B. Lippincott Company	
		SVEN OLERUD, M.D. ET AL., Transpedicular Fixation of Thoracolumbar Vertebral Fractures, Clinical Orthopaedics and Related Research, February 1988, pgs. 44-51, Number 227	
		CHARLES ROMBOLD, M.D., Depressed Fractures of the Tibial Plateau, Treatment with Rigid Internal Fixation and Early Mobilization, A Preliminary Report, The Journal of Bone and Joint Surgery, July 1960, pgs. 783-797, Vol. 42-A No. 5	
		KEVIN D. HARRINGTON, M.D. ET AL., The Use of Methylmethacrylate as an Adjunct in the Internal Fixation of Malignant Neoplastic Fractures, The Journal of Bone and Joint Surgery, December 1972, pgs. 1665-1676, Vol. 54-A No. 8	
		HOWMEDICA, INC., Exeter Pressurization System (Instructions), 1979, pgs. 1-2.	

Examiner Signature		Date Considered	
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1 Applicant's unique citation designation number (optional). 2 Applicant is to place a check mark here if English language Translation is attached.

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